

Introduction to Zoning and Development Regulation

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Chapter 4

Zoning Ordinances

Zoning ordinances are the basic land use regulation most commonly used in North Carolina and around the country. Zoning ordinances may be adopted as separate ordinances or incorporated as a section of an overall unified development ordinance that also includes subdivision and other development regulations.

History

The Origins of Zoning

Prior to the 1920s, landowners generally relied on nuisance suits to protect their rights if one neighbor used his or her land in a manner that harmed others, and some local governments had construction codes and regulations addressing individual noxious land uses. But with increasing urbanization, the need to know the rules of the development game in advance and the inefficiency of individual private law suits to protect neighborhoods and communities, zoning regulations emerged as the preferred means of addressing these concerns.

The precursors to zoning ordinances were regulations on particular uses. In the late 1800s and early 1900s, local governments in the United States began to enact ordinances to regulate where certain kinds of businesses could locate and how big certain kinds of buildings could be. Early examples include an 1885 Modesto, California, ordinance regulating the location of

laundries; ordinances regulating building heights in Washington, D.C., in 1899 and in Boston in 1904; and a 1909 Los Angeles ordinance restricting the siting of industrial plants. The Modesto ordinance is notable not only because it is among the earliest examples of a city regulating the location of particular types of businesses, but also because it shows just how controversial such regulations can be. For years people have argued whether the Modesto ordinance had the noble purpose of minimizing the harmful impacts of commercial laundries on adjacent residential areas or the ignoble purpose of racial discrimination against the Chinese immigrants who were the proprietors of most of the regulated laundries.

In 1916 New York City developed the nation's first comprehensive zoning ordinance. The construction of a subway system and the development of high-rise construction had created a hazardous situation. Buildings were so close together and contained so many people that inadequate ventilation and fire safety were serious problems. In addition, the increasingly crowded city was facing complaints generated when businesses, industries, and residential areas were located too close to one another. Separation of the social classes also played a role in motivating the move to adopt zoning in New York. Proprietors of exclusive shops along Fifth Avenue complained that low-income workers from nearby garment factories were crowding the sidewalks and driving away prosperous customers, prompting the shopkeepers to call for zoning restrictions to move the factories to a more distant location. To address all these issues, the city adopted a comprehensive zoning ordinance.

The problems with incompatible land uses, traffic, noise, congestion, and loss of amenities were certainly not confined to New York City. Neither was the desire to keep certain types of industry, business, and housing (and perhaps the people who lived and worked in them) in their "proper" place. As the nation shifted from a rural to an urban population, people were increasingly affected by neighbors' land uses. In 1800, less than 4 percent of the nation's population lived in cities. By 1920 that figure had passed 50 percent, and the national drive to develop new ways to deal with land use management took off.

Cities around the country soon adopted the New York zoning model. The U.S. Department of Commerce promoted the zoning concept by encouraging all the states to grant to their local governments the power to adopt zoning ordinances. After circulating drafts for several years, in 1922 the Department of Commerce, under the leadership of then-Secretary Herbert Hoover, published a model state zoning-enabling code. The national move-

ment to adopt zoning ordinances got a big boost in 1926 when the United States Supreme Court ruled the zoning concept constitutional.¹

In the period after World War I, the national trend to adopt zoning took hold in North Carolina. Many cities had by then already adopted some rudimentary land use regulations, but most regulations addressed only such issues as the location of individual buildings considered nuisances or fire hazards, such as wooden buildings in the center of cities. In 1923 the General Assembly adopted the model legislation proposed by the Department of Commerce and gave cities the authority to adopt zoning ordinances. By the late 1920s a dozen of the larger cities in the state had zoning ordinances.

The state's rapid population growth after World War II fueled the public demand for land use management in places well beyond the state's largest cities. By the 1960s most of North Carolina's cities and towns had adopted zoning ordinances. Zoning came later to rural areas. While a few of the most urbanized counties had local legislation authorizing zoning, counties were not granted general zoning authority until 1959, and it was not until the 1980s and 1990s that many counties adopted zoning.

The Evolution of Zoning

Zoning is now widely used in North Carolina and around the nation. Currently more than 550 cities and 80 counties in North Carolina have adopted zoning ordinances.² Almost all of the state's cities with populations over 1,000 have a zoning ordinance. Over 90 percent of the state's population resides in areas subject to zoning. Figure 2.1 on page 16 illustrates which counties have full, partial, or no zoning (see Chapter 2 for more details on city and county zoning jurisdiction). Yet there remains great interest in protecting private property rights and great skepticism about governmental regulatory programs. What explains the endurance—and even expansion—of zoning?

For one thing, zoning has become our principal tool for protecting property values and providing a stable real estate market. By using zoning to prevent incompatible uses from being too close together and by providing a degree of predictability about future land uses, local governments provide a degree of stability to the land market that property owners and developers both find reassuring. Other mechanisms, such as developers instituting private restrictive covenants and citizens filing nuisance suits against their neighbors, are far less predictable and effective means of accomplishing such goals. Zoning is valuable in other respects as well. It can help foster

economic development, protect aesthetic and environmental resources, facilitate the more efficient provision of public services, and protect and enhance the character of a given community.

Over the years, North Carolina's enabling legislation for zoning has evolved in several ways, becoming broader in some areas and more specific in others. The state has provided local governments with the authority to use more regulatory tools for land use management. For example, local governments can now use conditional zoning to tailor regulations to individual projects and can regulate and protect historic structures and neighborhoods. The state (and, increasingly, the federal government) mandates protection for a few kinds of facilities (such as manufactured homes, family-care homes, and telecommunication towers) to keep local land use regulations from unduly restricting them. These limits are discussed in more detail in Chapter 14. The state has imposed rigorous procedural requirements on local land use regulation, such as mailed notice requirements for hearings on proposed rezonings and quasi-judicial permit applications. The state has mandated that local land use regulations protect natural resources of critical importance, such as water supply watersheds and mountain ridges. Federal mandates on stormwater management require local land use regulations. Finally, the state has mandated that proposed developments receiving local approvals be protected from some subsequent changes in zoning regulations. In addition, cities or counties can and often do secure legislative approval of modest individual variations in the zoning power for their own local governments only.

Just as state legislation on zoning has evolved in character and complexity over the past seventy-five years, so have local zoning ordinances. As recently as 1958, the entire zoning code for the City of Charlotte was less than twenty pages long. Now a zoning ordinance for a small town is rarely less than a hundred pages long and the zoning ordinances for larger jurisdictions are typically well over five hundred pages long. What happened?

The first major change was an increase in the number of zoning districts. Many early zoning ordinances had only three districts—one each for residential, commercial, and industrial uses. Contemporary zoning ordinances frequently have twenty or thirty districts. For example, rather than a single commercial district, there may be different districts for downtown commercial, shopping centers, highway commercial, and neighborhood commercial. A second change has been to include standards on a broader range of topics, such as off-street parking, signs, storm-water control, historic preservation,

manufactured home parks, and landscaping. Zoning districts and standards are discussed in more detail below. A third change has been to add more flexibility to the ordinances through inclusion of special and conditional use permits. These are discussed in more detail in Chapter 10. Ordinances have been expanded to include standards and procedures for making these decisions. All of these factors have added to the length and complexity of zoning ordinances.

It is also increasingly common for cities and counties to merge the zoning, subdivision, and all other development-related ordinances into a single ordinance—generally referred to as a unified development ordinance and often called the UDO. This allows coordination and consolidation of ordinance provisions but leads to an even larger ordinance.

Content of Ordinances

Use Districts and the Zoning Map

A zoning ordinance can be an imposing document. Zoning ordinances often include several hundred pages of mind-numbing detail. To further complicate matters, each ordinance is unique—there is no standardized format, content, or even terminology for zoning ordinances. For example, a zoning district named “R-10” in one ordinance may allow single-family homes on 10,000-square-foot lots, but in another zoning ordinance an R-10 district may allow multifamily residential units at a density of ten units per acre. Differences between one ordinance and the next, however, allow cities and counties to tailor specific provisions to address local needs and government policies. Despite the lack of uniformity, ordinances do typically address certain issues and contain some common features—elements found in most zoning ordinances.

While most city and county ordinances—from taxes to dog licensing—apply uniformly throughout the jurisdiction, zoning sets different standards for different parts of a jurisdiction. To accomplish this, a zoning ordinance must contain a map as well as detailed textual instructions. First, the text of the ordinance describes what land uses are permitted in each district, what development standards have to be met in that district, and the like (see Figure 4.1). Second, a map places the land in the jurisdiction into various zoning districts (see Figure 4.2). Use of these zones is why the ordinance is called “zoning.” This map is an official part of the zoning ordinance. Any

change in the map to move land from one zoning district to another, a process called a rezoning, is an amendment of the ordinance and must follow all of the procedures required for zoning amendments.

Early zoning ordinances provided only a few broad zoning districts. Land was generally placed in one of three districts: a residential district, a business district, or an industrial district. These early ordinances also typically set these districts up as *cumulative* districts. That is, the residential district would be the most restrictive and no other land uses would be allowed in it. The business districts would allow both businesses and residential uses. The industrial districts were the least restrictive, allowing industrial, business, and residential uses. Figure 4.3 illustrates the “zoning pyramid” that was established by these cumulative zoning districts. The primary objectives of these early ordinances were separation of incompatible land uses and the protection of residential property values, both of which could be accomplished with this basic approach.

This early arrangement of use districts has become substantially more complicated. A contemporary zoning ordinance usually contains a number of conventional, overlay, floating, and conditional districts.

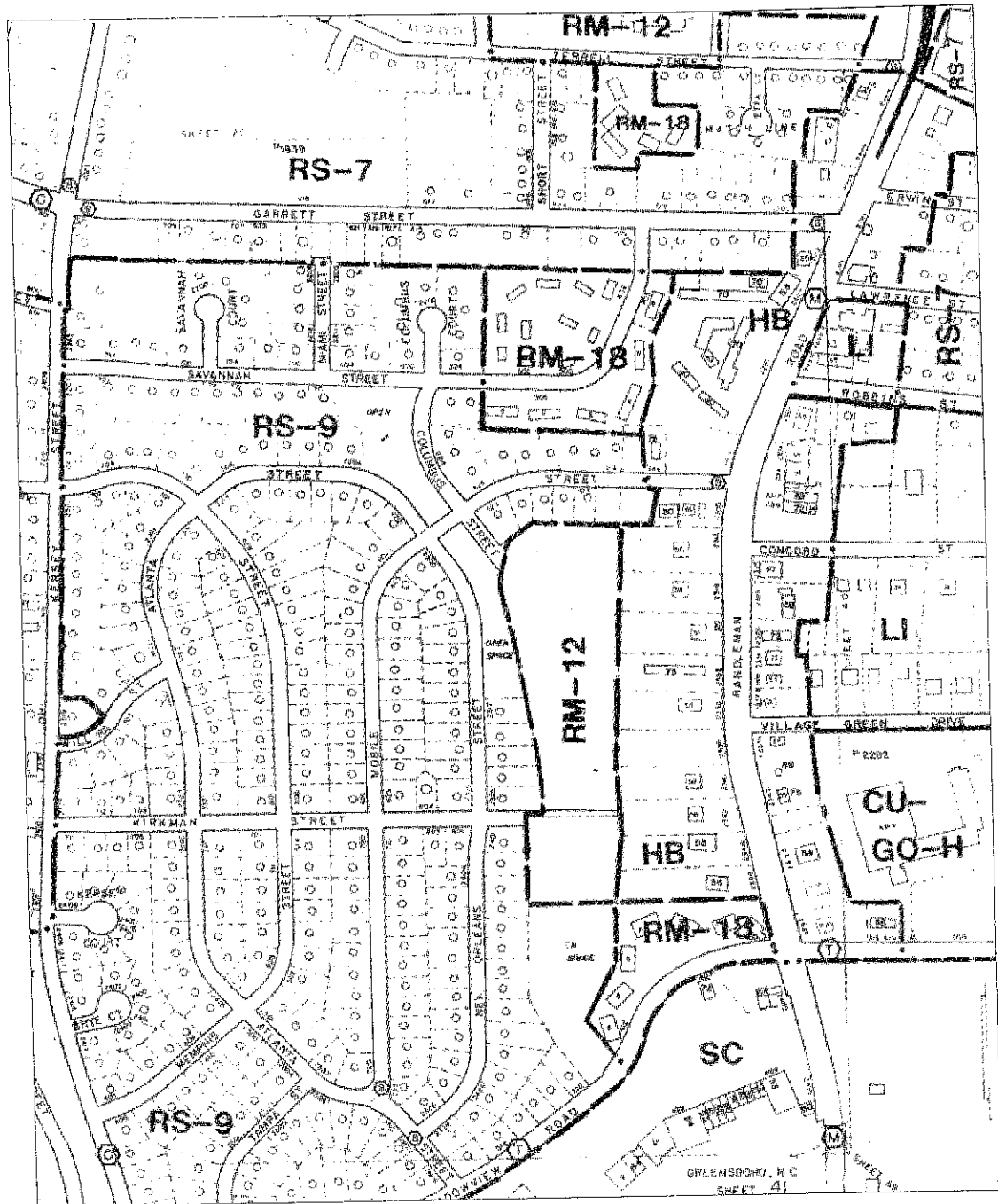
Conventional zoning districts allow a variety of permitted uses. Over time the range of uses allowed in a single district has become progressively narrower. As local governments have more finely tuned and limited the permitted uses in each district, the number of different zoning districts has multiplied. For example, instead of a single residential district, a modern zoning ordinance may have five or ten different residential districts—one for single-family residences on large lots, one for single-family residences on small lots, one for multifamily residences, and another for mobile homes. Similarly, a single business district may now be subdivided into separate zoning districts for neighborhood business, highway commercial, central business, and shopping center uses. While a small town or rural county ordinance may still only have five to ten zoning districts, a typical contemporary city zoning ordinance may now have twenty or thirty different zoning districts. A recent trend in zoning has been to reexamine this proliferation of districts and consider allowing a greater range of uses within individual districts. The number of districts and what range of uses is allowed in each are key policy choices for local governments amending and modernizing their ordinances. Most North Carolina zoning ordinances have a dozen or so conventional zoning districts.³

Figure 4.1 Sample Zoning Ordinance Text

<p style="text-align: center;">CHAPTER 4</p> <p style="text-align: center;">ZONING</p> <p style="text-align: center;">DISTRICTS AND USES</p>	<p style="text-align: right;">9-4-2</p>
<p>9-4-1 DISTRICTS ESTABLISHED</p> <p>All property within the jurisdiction shall be divided into zoning districts with designations and purposes listed in Section 9-4-2 (District Descriptions).</p>	
<p>9-4-2 DISTRICT DESCRIPTIONS</p>	
<p>(a) General Use Districts</p>	
<p>(1) <u>Agricultural:</u></p>	
<p>AG AGRICULTURAL DISTRICT</p>	
<p>The AG, Agricultural District is primarily intended to accommodate uses of an agricultural nature including farm residences and farm tenant housing. It also accommodates scattered nonfarm residences on large tracts of land. It is not intended for major residential subdivisions. The district is established for the following purposes:</p>	
<ul style="list-style-type: none"> a. to preserve the use of land for agricultural, forest, and open space purposes until urban development is enabled by the extension of essential urban services; b. to provide for the orderly transition to urban uses by preventing premature conversion of farmland; c. to discourage any use that would create premature or extraordinary public infrastructure and service demands; or d. to discourage scattered commercial and industrial land uses. 	
<p>(2) <u>Single-Family Residential:</u></p>	
<p>In the following districts the number refers to the minimum lot size in thousands of square feet.</p>	
<p>a. RS-40 RESIDENTIAL SINGLE FAMILY DISTRICT</p>	
<p>The RS-40, Residential Single Family District is primarily intended to accommodate single family detached dwellings on large lots in areas without access to public water and sewer services. The district is established to promote single family detached residences where environmental features (such as within water</p>	
<p style="text-align: center;">4-1</p>	

The text of a zoning ordinance defines the use districts, development standards, and procedures to be used in zoning.

Figure 4.2 Zoning Districts



Each zoning ordinance includes a map that places the land subject to zoning in various zoning districts.

Zoning districts now are rarely cumulative. While many zoning ordinances were originally adopted primarily to protect residential property values, modern zoning addresses broader public purposes, such as promoting economic development. A local government may determine that because of utility, highway, and rail access, an area should be reserved exclusively for

Figure 4.3 Hierarchy of Uses in Early Zoning Districts

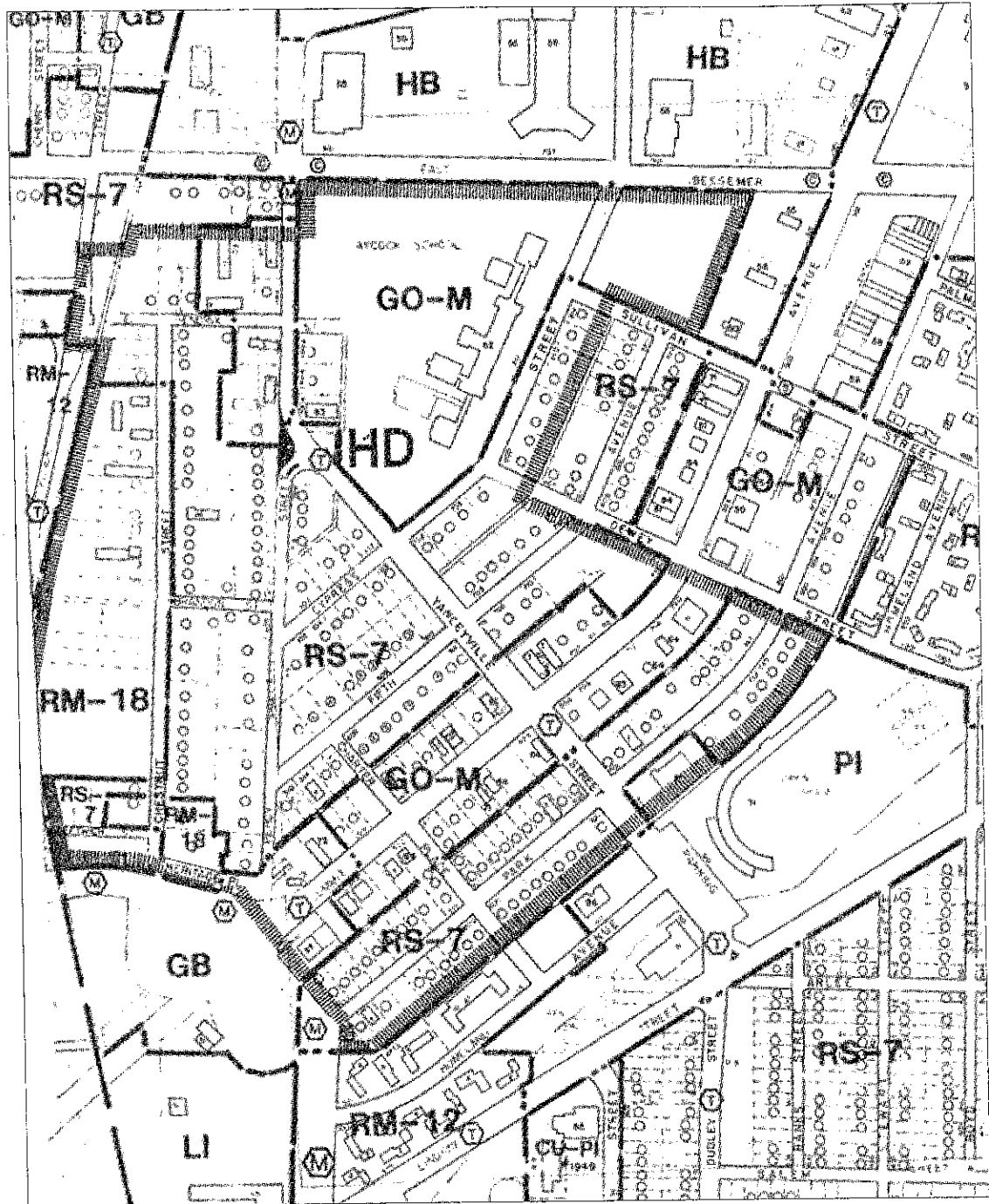
Type of District	Uses Allowed		
	Residential Use	Business Use	Industrial Use
<i>Residential</i>	•		
<i>Business</i>	•	•	
<i>Industrial</i>	•	•	•

future industrial development. If an area particularly suited for industrial development were to be developed for residential use, industrial development would have to be located elsewhere, and local government might have to provide new services at considerable expense—if in fact any other suitable sites even existed. Also, if part of the area were first developed for residential uses, its residents might want to keep future industry out of their residential neighborhood. To prevent these difficulties and keep the site available for future industrial or commercial uses, many cities now no longer permit residential uses in these zoning districts.

Overlay zones are now a common feature of zoning ordinances. These are special zones in which requirements are imposed in addition to the basic or underlying zoning district requirements. For example, if a river runs through a city, special flood hazard requirements (such as special setback, building elevation, or flood-proofing requirements) may be imposed on all property lying within the flood hazard area adjacent to the river. So a new “floodplain” overlay zoning district is created that contains all of the special flood hazard development standards, and that district is applied to all land in the flood hazard area. But the new district does not replace whatever zoning district was already in place; rather, it acts in addition to—or overlays—the basic conventional use districts, whether they are residential, business, or industrial. Development in the overlay district must comply with requirements of both the overlay district and conventional district (see Figure 4.4). Typical overlay districts include floodplain districts, historic districts, airport districts, and highway corridor districts. It is less common but also possible to have an overlay district that relaxes the standards for particular uses.

Floating zones are specialized districts used in many ordinances. These zoning districts are defined and set out in the text of the ordinance but not applied on the ground unless and until a landowner petitions to rezone his or her property to one of these districts. For example, a mobile home park

Figure 4.4 Overlay District Requirements



When an overlay district is adopted, the requirements of both the underlying zoning district and the special overlay district apply. In the example pictured above, the land within the bold, cross-hatched line must comply with the zoning ordinance's overlay historic district standards (thus the "HD") as well as meet the standards for whatever basic zoning district it is in (such as the RM-18, RS-7, or GO-M district).

district may be included in the zoning text to define the development standards for these uses—the densities allowed, road standards, minimum total size, and so forth. But the district is not applied to the zoning map unless and until a landowner asks for it.

Modern zoning ordinances have been criticized for being too rigid in their separation of uses, for producing sterile neighborhoods with no commercial uses, and for unduly separating homes from workplaces and shopping. Ironically, one of the early responses to this criticism was creation of yet another zoning district, a floating zone called a planned unit development (PUD) district. These districts allow a large site to be developed with a mixture of land uses according to an approved overall site plan. For example, a large tract may be developed with a mix of single-family and multifamily housing, with part of the site also devoted to commercial and office uses. Other PUD districts allow greater flexibility in dimensional standards (such as lot sizes and setbacks) upon approval of an overall master plan for the entire development. It is important to remember that zoning an area does not require a rigid separation of different land uses even though that is the way many ordinances have been structured. Each city and county can custom design its ordinance to include whatever number and type of districts and use restrictions seem appropriate in that particular place.

Contemporary zoning ordinances increasingly address this concern by adding a “mixed use” overlay or conventional district to allow greater flexibility amongst the types of uses permitted or a “traditional neighborhood” district to reduce lot size or setback requirements. These districts are adopted to accommodate houses clustered on smaller lots, with some neighborhood-scale commercial and office development and a strong pedestrian focus. These are sometimes referred to as “traditional neighborhood districts,” “pedestrian oriented development,” or “transit oriented development” districts.

Zoning districts may also be created that include detailed site-specific conditions, a practice known as *conditional* zoning. A local government electing to use this type of district must exercise great care, as enforceable individual conditions cannot be included in conventional zoning districts. Chapter 9 addresses the special issues that must be considered for conditional zoning districts. In North Carolina these districts are floating zones that can be created only at the landowner’s request.

Use Restrictions

Within each zoning district there is a list of permitted uses. These are sometimes called “uses by right” because they are automatically allowed in that district. For example, a zoning district might list single-family residences, fire and police stations, schools, places of worship, and temporary construction offices as permitted uses in a particular residential zoning district.

It is impossible to list every potential land use that might be proposed in the future. Thus, a zoning ordinance must be carefully crafted to handle uses that are not explicitly addressed in the ordinance. Many ordinances contain several broad categories of uses, such as “other commercial uses,” and specify where they can be located. Others prohibit any use not listed as permitted. Still others direct that unlisted uses are treated the same as the most nearly similar listed use. The courts have said that any ambiguity in the ordinance as to whether a particular use is permitted should be resolved in favor of the landowner.

Some older zoning cases from other states have held that it would be inappropriate to totally exclude an otherwise lawful use from the entire jurisdiction. Some uses—manufactured housing, telecommunication towers, and adult entertainment are examples—are protected from total exclusion by statutory or constitutional provisions. These types of uses are discussed in Chapters 14 and 15. In North Carolina the courts generally defer to the legislative judgment of elected policy-making officials. The choice of whether and where to allow a particular use is presumed by the courts to be valid unless it is arbitrary and capricious. The courts have, for example, routinely upheld decisions by jurisdictions to completely ban off-premise commercial advertising signs. A governing body, however, should consider context—the type of use, its impacts, the size and character of the regulated area, and so forth—in zoning deliberations. If a small, largely residential town excludes a heavy industrial use because there is just no place in the jurisdiction it can be located without substantial harmful impacts on its neighbors, the decision to exclude such uses would not be an arbitrary policy choice. On the other hand, total exclusion of a particular industrial use by a large city with substantial industrial areas may indeed be considered arbitrary. Before a governing board adopts a ban on a use, the board should identify the negative impacts of the use, discuss alternative measures to prevent those impacts, and explore the impacts of excluding the use. Only then should a potential total ban be considered.

In recent decades most zoning ordinances have added provisions allowing some “maybes” between those uses that are automatically permitted and those that are prohibited in a particular district. The local government may determine that certain uses are suitable for a particular zoning district if (but only if) specified conditions are met and only after detailed individual review. For example, it may determine that a multifamily residential development is permissible in a single-family zoning district if the development will be on a site of at least 2 acres, there is a 20-foot-wide vegetated buffer maintained between the development and adjacent single-family lots, and the project is designed to be compatible with the surrounding neighborhood. Such uses are allowed only after an individual makes an application for the use and local government approves it and grants a permit for it.

A zoning ordinance calls these uses conditional uses or special uses (and some older ordinances call them special exceptions), terms that are interchangeable, having the same legal definition. The zoning ordinance itself must set out the standards (or conditions) under which each conditional use will be allowed. The city or county is prohibited from making an ad hoc, case-by-case discretionary review of each project; the ordinance itself must spell out the standards for obtaining such a permit and a specific list of allowable uses. When someone wants to apply for a conditional use permit, a town or county board holds a hearing to take evidence on whether the project meets these standards. The governing board, the planning board, or the board of adjustment is responsible for holding a hearing and making the decision. Staff members may not make decisions on special or conditional use permits. These types of permits are discussed in more detail in Chapter 10.

Many zoning ordinances contain a table or schedule of permitted uses that graphically displays how each use is treated in each district—which uses are permitted and which require a special or conditional use permit. Figure 4.5 illustrates a typical list of permitted uses.

Dimensional Requirements

In addition to specifying which kinds of land uses are permitted in each zoning district, zoning ordinances also have standards for what sizes of lots and buildings are allowed. Standards for lots typically specify minimum lot size and minimum construction setbacks. For example, a particular residential zoning district may require a minimum lot size of 10,000 square

Figure 4.5 Zoning Table of Uses

TABLE 30-4-5-1 PERMITTED USE SCHEDULE		ZONING DISTRICTS																										
USE TYPES	Ref SIC	A	R	R	R	R	R	R	R	R	R	R	R	R	L	G	O	N	L	O	H	C	S	C	L	H	P	L
		G	S	S	S	S	S	S	M	M	M	M	M	M	O	O	O	B	B	B	B	B	P	P	I	I	I	U
		4	3	2	1	9	7	5	5	8	1	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	
RECREATIONAL USES (CONTINUED)																												
Public Parks	7990	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	1	
Public Recreation Facilities	7990	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	2	
Riding Stables	7999	S	S																								3	
Shooting Ranges, Indoor	7999	S																		D	D				D	D	3	
Shooting Ranges, Outdoor	7999	S																									3	
Skating Rinks	7999	S																									3	
Sports Instructional Schools	7999	S																		P	P	P	P	P	P	P	3	
Sports & Recreation Clubs, Indoor	7997	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	3	
Swim and Tennis Clubs	7997	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	3	
EDUCATIONAL AND INSTITUTIONAL USES																												
Ambulance Services	4119	P																		P	P	P	P	P	P	P	3	
Auditoriums, Coliseums, or Stadiums	0000																										3	
Cemeteries/Mausoleums	0000	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	2	
Churches	8661	P	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	3	
Colleges or Universities	8220																										3	
Correctional Institutions	9223	S																									4	
Day Care Centers, Adult (5 or less, Hom. Occ)	8332	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	1	
Day Care Centers, Adult (6 or More)	8332	S																		D	D	D	D	D	D	D	3	
Day Care Centers, Child (5 or less, Hom. Occ)	8351	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	1	
Day Care Centers, Child (6 or more)	8351	S																		D	D	D	D	D	D	D	3	
Elementary or Secondary Schools	8211	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	3	
Fire Stations	9224	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	3	
Fraternities or Sororities (Univ. or College)	0000																			D	D	D	D	D	D	D	3	
Government Offices	9000																			P	P	P	P	P	P	P	3	
Hospitals	8062																			P	P	P	P	P	P	P	3	
Libraries	8231																			P	P	P	P	P	P	P	3	
Museums or Art Galleries	8412																			P	P	P	P	P	P	P	3	
Nursing and Convalescent Homes	8050																			P	P	P	P	P	P	P	3	
Orphanages	8361	S																		P	P	P	P	P	P	P	3	
Police Stations, Neighborhood	9221	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	3	
Post Offices	0000																			P	P	P	P	P	P	P	3	
Psychiatric Hospitals	8063																			P	P	P	P	P	P	P	3	
Retreat Centers	0000	S																		P	P	P	P	P	P	P	3	

P=USE BY RIGHT D=DEVELOPMENT STANDARDS S= SPECIAL USE PERMIT REQUIRED Z=OVERLAY ZONING REQUIRED
 * =INDICATES ADDITIONAL DISTRICT REQUIREMENTS SEE SECTION 30-4-5.3

30-4-33

P=USE BY RIGHT D=DEVELOPMENT STANDARDS S=SPECIAL USE PERMIT REQUIRED Z=OVERLAY ZONING REQUIRED
 * INDICATES ADDITIONAL DISTRICT REQUIREMENTS SEE SECTION 30-4-33

30-4-33

A table of uses, like the one depicted above from the Greensboro, North Carolina, zoning ordinance, sets out whether each particular land use is permitted automatically, permitted under certain conditions, or prohibited in each zoning district (see key at bottom of table).

feet for each dwelling unit and may require the house to be located at least 50 feet from the front property line, 20 feet from the rear property line, and 10 feet from each side property line. In a different residential district the minimum lot size may be 20,000 square feet, with the same front, rear, and side yard setbacks. The ordinance may also establish minimum lot widths and a minimum street frontage for each lot. As a variation of these typical setback requirements, some zoning ordinances include what are in effect maximum setbacks in some zoning districts. For example, a commercial district may have a "build to" line, requiring all new stores to be no more than 20 feet from the street right-of-way.

Zoning standards for building dimensions also typically set maximum height and structural bulk limits. For example, a neighborhood commercial district may limit building height to no more than 35 feet and building

square footage to 5,000 square feet or less, to cover no more than 50 percent of the lot area. While the use of minimum floor areas for residential structures is common in private restrictive covenants, only a few North Carolina zoning ordinances include minimum sizes for single-family homes. It is increasingly common for ordinances to have a maximum square footage for some residential districts to limit construction of houses that are far larger than the neighboring homes.

Increasingly various other dimensional standards are included in zoning ordinances. Some ordinances use a “floor area ratio” to regulate intensity of development, particularly in commercial areas. The floor area ratio is calculated by dividing the total square footage on all floors of a building on a lot by the square footage of the lot. For example, a 10,000 square foot lot with a 3,000 square foot building would have a floor area ratio of 0.3, while a 10,000 square foot lot with a multi-story building with a total floor area of 50,000 square feet would have a floor area ratio of 5.0. The ordinance would set different maximum floor area ratios for different zoning districts. Many ordinances limit the total amount of impervious surface coverage on a lot in order to manage stormwater runoff—for example, requiring that not more than 20 percent of a lot be covered by buildings and driveways.

Other Common Zoning Requirements

Land use and lot and building size limits provide the basis for a zoning ordinance, but modern zoning increasingly specifies other land development standards as well. Typical provisions include standards on landscaping, parking, signs, flood hazards, watershed protection, and historic preservation. Others include regulations regarding development timing and relating development approvals to availability of public services.

Landscape

Landscaping requirements typically apply to nonresidential land uses. For example, new businesses and industries may be required to have a planted buffer to provide a separation between uses or to assist in protecting water quality. Zoning ordinances may require provision of landscaping along the street front or in parking areas to enhance the community’s appearance. The size of the area to be landscaped and even the type of plants may be specified.

Parking

In order to prevent street congestion or impositions on neighbors, ordinances usually require some land uses to provide a minimum amount of off-street parking on site. For example, a restaurant may be required to provide one parking place for each four seats provided, an office building may be required to provide one parking place for each 250 square feet of floor space in the building, and an industry may be required to provide two parking places for every three employees. The zoning ordinance will usually also specify the size of the parking places, whether they must be paved, where on the site they can be located, traffic flow within the parking area, and other site-design standards.

Signs

Zoning ordinances often include sign regulations, though sometimes a separate sign ordinance covers these regulations. Typical sign regulations include limits on location (for example, no billboards allowed in residential zoning districts and a minimum distance between billboards), size (maximum height and square footage), and types (for example, a prohibition on flashing lights, portable signs, or windblown signs). Regulation of signs raises some constitutional issues related to free speech that are discussed further in Chapter 15. There are also federal and state limits on how local governments may regulate billboards and other outdoor advertising signs, which are discussed in Chapter 14.

Flood Hazards

Many zoning ordinances include standards to reduce flood hazards. State and federal statutes do not mandate local zoning regulation of flood hazard areas, but they strongly encourage it and set some standards for any floodplain zoning that is adopted. Under federal law, property owners in a community are not eligible for federal flood insurance unless the local government has adopted floodplain zoning regulations that meet minimum federal standards. These standards generally prohibit development in the floodway, require elevation of the lowest habitable floor above the one-hundred-year flood level in the broader floodplain, and limit location of manufactured housing in the floodplain. Most every city and county with flood hazard areas therefore has a floodplain regulation, either as part of zoning or as a separate ordinance.

The state laws on flood hazard areas were updated after the devastating floods of Hurricane Floyd in 1999. These laws limit certain land uses in the flood hazard area (no solid or hazardous waste facilities, salvage yards, or chemical storage are permitted). State law also requires local governments to have an approved hazard mitigation plan and to be eligible for the national flood insurance program in order to receive state disaster assistance funds.

Water Quality

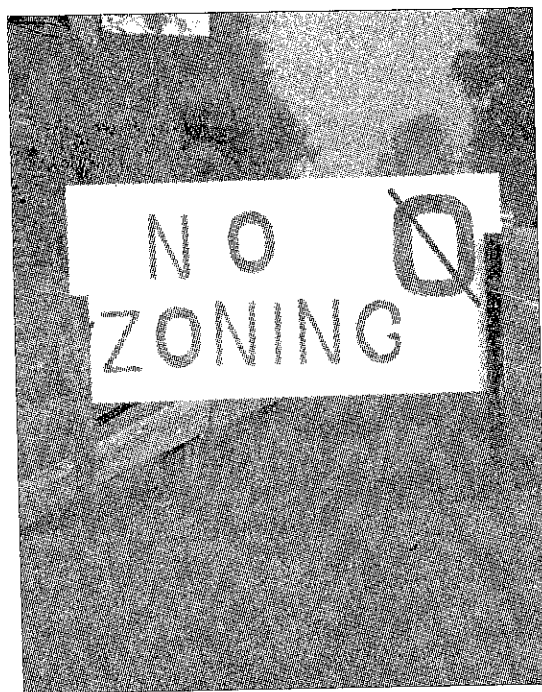
The state of North Carolina requires all local governments that have jurisdiction over land that drains into a public surface water supply to regulate development so as to minimize contamination of these lakes and rivers. State and federal regulations require that urban stormwater runoff be controlled to protect water quality in many areas. Such regulations limit the number of residential units per acre, limit the amount of built-on area in commercial or industrial areas, require vegetated buffers along the shoreline, and limit the placement of hazardous materials in these critical areas.

Design Standards and “Form-Based” Codes

Some zoning ordinances include design standards for individual buildings. These are most often applied in sensitive areas, such as downtowns and commercial corridors, and often only to nonresidential buildings. Historic district requirements that new buildings be consistent with the neighborhood’s historic character are the most common form of design standards applicable to residential and nonresidential structures.

Design standards typically address elements commonly regulated in zoning, such as the height and bulk of buildings, their location on a lot, and the location of off-street parking. Some ordinances also address other aspects of building design, such as types of building materials, roof slope, and incorporation of architectural details into building façades. Many of these codes have a particular focus on the design of streets and public spaces, such as provisions for on-street parking, sidewalks, street trees, and the like.

A few jurisdictions have refocused their zoning to address the form and density of structures rather than the uses to which the buildings are devoted, employing a “form-based code” rather than a traditional zoning emphasis on land uses. It is increasingly common for jurisdictions to combine these two approaches using a “hybrid” ordinance that incorporates form-based standards for particular areas and more traditional use-based zoning in the remainder of the jurisdiction.



Zoning is often controversial. The sign at left objects to extension of zoning to rural portions of Watauga County. The sign at right urges the Raleigh City Council to use zoning to stop a proposed mixed-use development.

Zoning ordinances do not include construction standards for buildings or minimum habitability standards for residences. Construction is regulated through a uniform state building code and maintenance of residences for basic habitability is regulated through a housing code. See Chapter 5 for a brief discussion of these codes.

Notes

1. Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).
2. David W. Owens & Dayne Batten, *2012 Zoning Survey Report*, PLAN. & ZONING L. BULL. No. 20 (School of Government, July 2012). For a summary of the other land use regulations and a list of which local governments in North Carolina have adopted each, see DAVID W. OWENS & NATHAN BRANSCOME, AN INVENTORY OF LOCAL GOVERNMENT LAND USE ORDINANCES IN NORTH CAROLINA (Special Series No. 21, May 2006).
3. DAVID W. OWENS & ANDREW STEVENSON, AN OVERVIEW OF ZONING DISTRICTS, DESIGN STANDARDS, AND TRADITIONAL NEIGHBORHOOD DESIGN IN NORTH CAROLINA ZONING ORDINANCES (Special Series No. 25, Oct. 2007).